# Noose PIC

## Shell

#### Public colleges and universities ought to prohibit displays of the hangman’s noose and adopt a victim-centered approach when adjudicating enforcement. They ought to repeal all other restrictions on constitutionally-protected speech. Relevant actors will defer to the mandates of the CP Bell JD 09

Bell, Jeannine [Professor of Law, Maurer School of Law, Indiana University Bloomington. A.B.¶ Harvard College, 1991; J.D. University of Michigan Law School],. "The Hangman's Noose and the Lynch Mob: Hate Speech and the Jena Six." (2009).

In order to deal with those cases where lack of intent seems to thwart¶ punishment under existing legislation, I advocate a victim-centered approach.¶ This is of course not the first victim-centered approach to racist¶ speech. Other scholars have advocated victim-based approaches to the legal¶ regulation of racist speech to address the harm that such speech causes to the¶ minorities who are so frequently its targets. 69 One of the most predominant¶ victim-centered approaches to racist speech is that offered by Matsuda. In¶ her article, Public Response to Racist Speech: Considering the Victim's¶ Story, 70 Matsuda notes that even though regulations on hate speech have¶ been accepted in several other countries 171 and under international law, 172 the¶ American tradition of First Amendment absolutism means that there is a¶ substantial barrier to the adoption of regulation in this area. 173 Because the¶ United States has an ugly history of suppressing speech, and to avoid the¶ social danger posed by regulating potentially valuable speech, Matsuda concems¶ herself only with regulating the most extreme cases of racist speech. 174¶ Matsuda offers a theory for regulating the "worst of the worst" racist hate¶ speech. She identifies the worst racist speech as that which meets the following¶ three criteria:¶ 1. The message is of racial inferiority;¶ 2. The message is directed against a historically oppressed group;¶ and¶ 3. The message is persecutorial, hateful, and degrading.17¶ 1¶ Wary of critics' concerns, this Article crafts an approach that is even¶ narrower than Matsuda's. Rather than focusing on several different types of¶ hate speech, as Matsuda does, it advocates a victim-centered approach that¶ focuses only on punishing the "wordless speech" in readily identifiable extreme¶ symbols of racial hatred like the hangman's noose. Irrespective of the perpetrator's actual intent, often the victim experiences¶ the hanging of a noose as a threat. To evaluate whether the placement¶ of a noose constitutes legally threatening conduct, and therefore may be punished,¶ courts adopt the Ninth Circuit's approach to evaluate whether the¶ noose hanger's behavior constitutes true threat. Such a test was applied in¶ United States v. Mitchell,'76 a case in which an individual made a threat¶ against President Reagan's life.'77 Mitchell later claimed his threats should¶ reasonably have been regarded as "ludicrous and made in jest."'' 78 Looking¶ to the full context of Mitchell's speech, as required by Watts v. United¶ States,179 in Mitchell the Ninth Circuit adopted an objective intent standard¶ for interpreting the requirement that a threat be made "knowingly and willfully."1¶ 80 The Ninth Circuit's objective standard required that "the defendant¶ intentionally make a statement that a reasonable person under the circumstances¶ would interpret as a serious expression of intent to harm the President."''¶ I suggest that courts use a similar standard to evaluate whether a¶ noose hanging constitutes threatening conduct. Courts should assess¶ whether it appeared that that the person who has placed the noose intended¶ to act in a manner that a reasonable person under the circumstance would¶ interpret as a threat. The historical context of noose hanging means that in¶ the vast majority of cases courts would be likely to determine that noose¶ hanging is a threat, irrespective of a perpetrator's contention that such behavior¶ was innocent.¶ Virginia v. Black may provide limited support for this approach. In¶ Black, the Court recognized that cross burning is threatening because of its¶ historical use.'82 The Court also noted that cross burning's violent history¶ can be evoked even when it is used in very different contexts. The Court¶ noted that "individuals without Klan affiliation who wish to threaten or¶ menace another person sometimes use cross burning because of this association¶ between a burning cross and violence."' 83 Because burning crosses¶ have been used in an historical context that is threatening, the Court accepted¶ that so long as the perpetrator intended to intimidate, the state may¶ prohibit cross burning. Given the history of the hangman's noose, a clear¶ analogy could be made to hanging of nooses. Nooses hung by a perpetrator¶ who intended to intimidate or threaten may be proscribed by the state.

The cp is legitimate and competitive:

#### 1. Any means all

Cambridge Dictionary

Cambridge Dictionary, Any, <http://dictionary.cambridge.org/grammar/british-grammar/quantifiers/any>. NS

We use any before nouns to refer to indefinite or unknown quantities or an unlimited entity: Did you bring any bread? Mr Jacobson refused to answer any questions. If I were able to travel back to any place and time in history, I would go to ancient China. Any as a determiner has two forms: a strong form and a weak form. The forms have different meanings. Weak form any: indefinite quantities We use any for indefinite quantities in questions and negative sentences. We use some in affirmative sentences: Have you got any eggs? I haven’t got any eggs. I’ve got some eggs. Not: I’ve got any eggs. We use weak form any only with uncountable nouns or with plural nouns: [talking about fuel for the car] Do I need to get any petrol? (+ uncountable noun) There aren’t any clean knives. They’re all in the dishwasher. (+ plural noun) Warning: We don’t use any with this meaning with singular countable nouns: Have you got any Italian cookery books? (or … an Italian cookery book?) Not: Have you got any Italian cookery book? Strong form any meaning ‘it does not matter which’ We use any to mean ‘it does not matter which or what’, to describe something which is not limited. We use this meaning of any with all types of nouns and usually in affirmative sentences. In speaking we often stress any:. (+ uncountable noun) When you make a late booking, you don’t know where you’re going to go, do you? It could be any destination. (+ singular countable noun) [talking about a contract for new employees] Do we have any form of agreement with new staff when they start? (+ singular countable noun) [a parent talking to a child about a picture he has painted] A: I don’t think I’ve ever seen you paint such a beautiful picture before. Gosh! Did you choose the colours? B: We could choose any colours we wanted. (+ plural countable noun) See also: Determiners and types of noun Some and any Any as a pronoun Any can be used as a pronoun (without a noun following) when the noun is understood. A: Have you got some £1 coins on you? B: Sorry, I don’t think I have any. (understood: I don’t think I have any £1 coins.) [parents talking about their children’s school homework] A: Do you find that Elizabeth gets lots of homework? Marie gets a lot. B: No not really. She gets hardly any. (understood: She gets hardly any homework.) A: What did you think of the cake? It was delicious, wasn’t it? B: I don’t know. I didn’t get any. (understood: I didn’t get any of the cake.) See also: Determiners used as pronouns Any of We use any with of before articles (a/an, the), demonstratives (this, these), pronouns (you, us) or possessives (his, their): Shall I keep any of these spices? I think they’re all out of date. Not: … any these spices? We use any of to refer to a part of a whole: Are any of you going to the meeting? I couldn’t answer any of these questions. I listen to Abba but I’ve never bought any of their music. Any doesn’t have a negative meaning on its own. It must be used with a negative word to mean the same as no. Compare Not Any: there aren’t any biscuits left. They’ve eaten them all. No: There are no biscuits left. They’ve eaten them all.

#### 2. This means the CP is a non topical PIC- like the states counterplan on a federal action topic- these pics are uniquely legitimate

#### A. PICS bad arguments rely on parametrics- they presume excluding minutia from a specific plan, here the negative argument is non topical which is the heart of negative ground. This also checks limits explosion- there are a finite amount of first amendment principles the neg can attack

#### B. Not Trivial –the CP redefines the standard used to evaluate symbolic speech- the affirmative has ample ground to defend free speech vs the CP –we don’t moot the 1AC

#### C. Literature checks- there is an extensive debate about this PIC-it is the core of the hate speech debate with decades of debate over how to regulate it. Several high profile cases in the last ten years make it critical to their discussion of race.

#### The counterplan competes – traditional symbolic speech jurisprudence relies on the intent of the speaker. We shift this to the victim-centered approach, which means we go beyond traditional first amendment protections. This is key to the ban. Bell 09

Bell, Jeannine [Professor of Law, Maurer School of Law, Indiana University Bloomington. A.B.¶ Harvard College, 1991; J.D. University of Michigan Law School,]. "The Hangman's Noose and the Lynch Mob: Hate Speech and the Jena Six." (2009).

Like the burning cross and the swastika, the hangman's noose is a¶ prominent symbol of extreme hatred. Punishing the use of these symbols¶ presents legal challenges. These symbols have a sordid history of which¶ victims cannot help but be reminded when they are displayed. Indeed, the¶ display of each of such symbols is a message invoking its history and¶ thereby conveying a profound threat. Despite the nearly universal message¶ that each of these symbols seems to convey to the targeted populationslargely¶ racial, ethnic, and religious minorities-some perpetrators (though clearly not all) claim to have a different understanding. They use nooses as¶ jokes or may intend (or at least claim they intend) to send a nonracial message.¶ This section argues that the use of these threatening symbols should be¶ regulated when the perpetrator is communicating a threat.¶ Using cross burning as an analogy provides a doctrinal basis for punishing¶ some noose hanging. In Virginia v. Black, the Supreme Court acknowledged¶ the threatening nature of the burning cross and allowed states to¶ regulate this particular form of expressive conduct when it is intended to¶ intimidate. 167 But one cannot necessarily infer from Black that all noose¶ hanging may be regulated. In fact, from a social perspective, one of the¶ greatest difficulties in First Amendment hate speech jurisprudence is that¶ courts have allowed the individuals who use hate symbols to decide what¶ they mean. Under Black, individuals can assert whether they are burning a¶ cross as a statement of ideology, as a symbol of group solidarity, or as a¶ symbol of something else to avoid the law's constitutional reach. This¶ means it is the way the perpetrator sees the symbol that governs whether the¶ incident can be punished. Thus, the person who places it, not the individual¶ who sees it, decides its meaning. This is true even in the case of a burning¶ cross-a symbol that the Court and American society at large have identified¶ as threatening.¶ The Supreme Court's decision in Black offers little space for the victim's¶ perspective. In a case in which there is uncontroverted evidence that¶ the perpetrator intended the burning cross as a joke, or meant to send a¶ wholly nonviolent message, Black seems to suggest that the state would not¶ be able to punish the perpetrator, even if the victim were upset or frightened.¶ The prevalence of joking, historically unaware perpetrators, and even perpetrators¶ who are fully aware of the historical legacy but do not intent to send a¶ racial threat using one of these hate symbols, suggest that there may be¶ many who escape punishment.¶ The literature on victims' experiences of hate speech indicates that there¶ is a wide gap between the perspectives of perpetrators and victims.'68 This¶ gulf is one that cannot be bridged unless we clearly support the idea that¶ noose hanging constitutes a threat. Neither hate crime legislation with its¶ concern for motivation, nor recent noose legislation with its focus on the¶ intent to intimidate, is able to adequately punish perpetrators who maintain¶ that they did not intend to intimidate victims. This Article proposes that¶ where the perpetrator has used an extreme hate symbol like a burning cross,¶ a noose, or a swastika, courts should take an approach that incorporates the¶ victim's perspective.

The net benefit is historical violence –

#### Empirically instances of noose hanging happen on college campuses and attempts to challenge it from within the black community have been met with death threats and violence. Moore and Bell 17

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

Just a small sampling of racist incidents on college and university campuses throughout ￼the post–civil rights era reveals the nature of this persistent form of racism. For example, in September of 2016 a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Jaschik 2016). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a “Compton Cookout,” which they claimed was in “celebration” of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in “ghetto” fashion and indicating that chicken, watermelon and malt liquor would be served. In response to this provocation, black students organized a protest, criticizing this racist depiction of blackness and black culture. The protest sparked an outburst of racist activity at UCSD, including a campus television broadcast in which white students called the black student protestors “ungrateful niggers,” the hanging of a noose from a bookcase in the main library, and the placement of a white pillowcase in Ku Klux Klan (KKK) style over a campus statue (Archibold 2010; Gordon 2010). In 2007 at Hamline University, six white student-athletes dressed for Halloween in what they called “mock African tribal outfits,” donning blackface, black Lycra suits, and Afro wigs. On the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Hoffstrom 2008).2 In the spring of 2002, a white student at Harvard Law School used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term “nigs” to refer to African Americans. After a protest in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year black woman law student that said, among other things, “We at the Harvard Law School, [are] a free, private community, ￼where any member wishing to use the word ‘nigger’ in any form should not be prevented from doing so.”3 In April 2000 at the University of Iowa College of Dentistry, faculty members received an e-mail message demanding that the school dismiss its minority students within three days, and after that three-day period had passed, students of color in the college received threatening racist e-mails (Leonard 2000). In February 1995 at UC Berkeley’s renowned School of Law, 14 students of color received letters in their mailboxes calling them “niggers,” “wetbacks,” and “chinks” and suggesting that Boalt was “for whites only” (Koury and Koh 1995). In the fall of 1986 at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a black freshman, yelling racial epithets and burning a paper cross (UPI 1986).¶ These examples are illustrative of incidents that have taken place at all types of histori¶ lly white colleges and universities across the nation, beginning after the legal changes of the civil rights era through which people of color gained entry to these institutions. In 1990 the National Institute Against Prejudice and Violence reported that incidents of “hate speech” on college campuses and universities could be calculated at between 800,000 to 1 million per year (Matsuda et al. 1993).4 Indeed, a 1994 report conducted by the University of Houston Institute for Higher Education Law and Governance noted that US colleges and universities are characterized by a “climate of bigotry” (Agguire 1994). Yet when instances like those discussed above occur, individuals in the media and in the academy often seem surprised, and the discourse around these incidents frames them as “recent trends” or “increasing hostilities”—as something new and/or unique (see Matsuda et al. 1993). The reality, however, is that racist expressions and activities on historically white college and university campuses have been consistent and relatively regular occurrences throughout the post–civil rights era. ￼The persistence of these forms of overt and hostile racism in national institutions, which are meant to be gateways to upward mobility, betrays a contradiction in the broader contemporary popular discourse that racism is a thing of the past that disappeared following the legal changes brought about during the era of the civil rights movement. It is perhaps this contradiction that leads scholars and pundits to frame such incidents as newly emergent, isolated, or surprising. Moreover, incidents of blatant racism on college and university campuses seem to contradict contemporary sociological analyses of the racial dynamics of the post–civil rights era. Contemporary race scholars suggest that while racist structures and hierarchies persist, racist expression typically takes place in a less overt, more subtle manner—what Eduardo Bonilla- Silva (2010) has termed “color-blind racism” (see also Coates 2011; Bobo, Kluegel, and Smith 1997; Carr 1997). Rather than expressing overt hostility, color-blind racist narratives assert a decontextualized commitment to racial equality while simultaneously ignoring or justifying— and thereby reifying—historical and structural racial inequality (Bonilla-Silva 2010; Bell and Hartmann 2007). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets, which profess rhetorical commitment to equality of opportunity and, at the same time, minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality. Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post–civil rights era (e.g.,; Moore 2008; Gallagher 2003; Lewis 2003; Parks-Yancy and Post 2003; Carr 1997; DiTamaso, Feagin, Vera, and Imani 1997). While the concept of color-blind racism provides invaluable theoretical insight into the persistence of racial inequality in the post–civil rights era and its continued manifestations in US institutions, ￼the current scholarship fails to explain adequately the persistence of explicit hostile racist incidents on college and university campuses like the ones described above.¶ Placing these incidents within the broader context of a racialized social structure, which is characterized by a dominant discourse based on color-blind racism, this research reveals an important connection between these overt and blatant racist expressions and the more tacit and covert racial tenets of color-blind racism. In fact, we suggest that the two forms of racial expression—explicit overt racist expression and covert color-blind racist discourse—work in connection with one another to mark and reinscribe colleges and universities as white institutional spaces. Specifically, we suggest that the explicit nature of incidents of racist expression gives rise to two important discursive frames that together tend to reinforce institutional and structural racial inequities. On the one hand, explicitly racist incidents on college and university campuses create a discursive platform for liberal college communities to publicly reject racism while tacitly delimiting the definition of racism to only explicit expressions of racial hostility. In other words, these racist incidents provide an opportunity for institutional actors to reaffirm a commitment to color-blind principles of equality in their institutions. On the other hand, these incidents create a platform for the color-blind, abstract liberalist construction of freedom of speech advocated by organized free speech absolutists and codified by US courts. More specifically, racist incidents on college and university campuses give rise to a discourse that actively defends the right to racist expression. The discursive frames that arise in conjunction with racist expressions on college and university campuses serve as a mechanism of substantive racial exclusion, functioning to reproduce the white institutional space that characterizes historically white colleges and universities in the United States.

#### Lynch imagery connects black students to a history of racial violence and slavery that makes their lives. Bell and Moore 17

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

Such forms of racist expression garner their meaning through their connection and reference both to the oppressive and often violent oppression of people of color throughout the history of this nation and to the contemporary racial social structure characterized by patterned societal racial inequality—that is, to systemic racism (Feagin 2006). Racist expression on college and university campuses, then, serves as a source of social control and symbolic violence in the same manner as in other social spaces. Hanging nooses, burning mock (or real) crosses, dressing up in Ku Klux Klan garb, performing mock reenactments of the violence of slavery, donning blackface in minstrel fashion, or deliberately enacting caricaturized, stereotypical black representations—all hark back to a history when the vast majority of institutions (including those of higher education) were “for whites only” and when the boundaries of those institutions were regulated through physical and symbolic violence. When racist speech and expression take place in institutional settings, such as in colleges and universities, these forms of communicative action reinscribe the relations of structural and cultural power that are essential elements of white ￼institutional spaces. This refashioning, reimagining and reenactment of some of the most sinister elements of Jim Crow racism using contemporary technologies and social forms signifies the continued outsider status and the alleged inferiority of people of color in these spaces. In addition, these spectacles involving the contemporary mobilization of the symbols of Jim Crow signify the continuing potential for symbolic and physical violence against people of color in these spaces despite the date and despite the appearance of color-blindness.

#### Permitting racial symbols society for genocide – multiple empirical examples prove. Tsesis 09

Tsesis, Alexander [Loyola University Chicago School of Law]. "Dignity and speech: The regulation of hate speech in a democracy." (2009).

Permitting persons or organizations to spread ideology touting a¶ system of discriminatory laws or enlisting vigilante group violence¶ erodes democracy. So it was in the Weimar Republic, where the¶ repeated anti-Semitic propaganda of vulgar ideologues like Julius¶ Streicher, who published perverse attacks against Jews in Der¶ Stiirmer, chipped away at the post-World War I German democratic¶ experiment.6¶ ' Avowedly influenced by nineteenth century antiSemitism,¶ his weekly stories of Jewish ritual murder and sexual¶ exploitation were a crude way of antagonizing the victims and¶ gaining support for widespread prejudice against Jews." It is truly¶ eerie, now, looking at photographs relating the effectiveness of Nazi¶ propaganda: respectable looking adults in suits and dresses¶ listening to long lectures on Jewish inferiority; children, barely able¶ to stand on their two feet, raising their right arm in a Nazi salute.¶ Nazi propaganda incorporated numerous well-known¶ nineteenth century slogans. To take one example, Streicher, who¶ was later sentenced to death by the Nuremberg War Crimes¶ Tribunal, 64 used an inflammatory slogan, "The Jews are our misfortune!" on his newspaper masthead.& At one point over¶ 130,000 copies of his publication were sold and displayed on public¶ message boards throughout the country.66 The phrase also became¶ prominently featured on posters throughout the Third Reich.67¶ This slogan was taken verbatim from an 1879 article by¶ Professor Heinrich von Treitschke, arguably the greatest German¶ historian of the nineteenth century.68 Its visibility in pre-World War¶ II German society helped legitimize anti-Semitism there in¶ intellectual circles.69¶ A gradual process of incitement also occurred elsewhere. In¶ many American colonies, authors and legal institutions had been¶ degrading blacks since the seventeenth century.70 By national¶ independence, in 1776, the colonies of South Carolina and Georgia¶ had long-standing commitments to retaining slavery despite the oftrepeated¶ mantra of universal natural rights. In 1787, those two states refused to endorse the proposed Constitution without¶ provisions protecting that undemocratic institution."72¶ Senator John Calhoun, Congressman Henry Wise, and other¶ powerful racist orators misled the public about the supposedly¶ benevolent slave owner, feeding his slaves and treating them like¶ his own children. 3 The repeated inculcation of supremacism proved¶ effective in misrepresenting blacks as moveable property.¶ Abolitionists like Theodore Weld, Angelina and Sarah Grimk6,¶ Frederick Douglass, and William Lloyd Garrison were unable to win¶ over the country to their abolitionist views.74 To the contrary,¶ proslavery thought monopolized the Southern marketplace of¶ ideas.' Slavery came to an end after a bloody Civil War, not¶ through articulate or even heated debate.6¶ Because intimidating hate speech has so often inflamed¶ dangerous attitudes, the value of such expression should be¶ balanced against the likelihood that it will cause harm. The risks¶ are greater when hate propaganda incorporates symbolism, like¶ swastikas, that demagogues have historically displayed to rally¶ supporters to action. Robert Post is undoubtedly correct that speech¶ is valuable because it provides a breeding ground for "collective selfdetermination."7¶ 7 The more difficult question is how self-expression¶ should be treated when it conflicts with the safety of its target.¶ As much as self-expression is fundamental to democratic¶ institutions, it can, nevertheless, be balanced against the social¶ interest in safeguarding a pluralistic culture by preventing the¶ instigation of demagogic threats. Placing no limits on speech-not¶ even on expressions blatantly intended to make life miserable for¶ minorities-preserves the rights of speakers at the expense of¶ targeted groups. Defamation statutes, zoning regulations, and¶ obscenity laws indicate that the freedom of speech is not shielded¶ where it undermines other individuals' legitimate interests. 7 Hate speech regulation undoubtedly inhibits some opportunities for selfexpression;¶ more importantly, it prevents instigative communication¶ from undermining its targets' ability to live unaccosted by¶ harassment.¶ In the many historic examples when destructive messages¶ proved to be effective in instigating violence, they caused enormous¶ social turmoil. Just like shouting "fire" in a crowded movie theater,¶ which can be prohibited without violating the First Amendment,79¶ hate speech can cause a stampede. Take Spain, for instance, which¶ expelled its Jewish population in 1492.80 The expulsion came after¶ years of Inquisition propaganda and hurt both the exiled Jews and¶ the remaining Spanish population. 1 Teachings by zealous¶ preachers like Vincent Ferrer, a later-canonized Dominican monk,¶ in the late fifteenth century brought on a nationwide anti-Jewish¶ hysteria that opposed the free practice of Judaism while decrying¶ overt violence.82 Pursuant to his instigation, a Castilian decree¶ discriminated against Jews in employment, dress, and criminal¶ punishments.83 Historian Heinrich Graetz explained the connection¶ between anti-Jewish preaching and draconian edicts: the populace¶ was "inflamed by the passionate eloquence of the preacher [and]¶ emphasized his teaching by violent assaults on the Jews." 4 Another¶ historian explained that:¶ For centuries, Christians had been encouraged to hate the¶ Jews. With preachers telling them, Sunday after Sunday, that¶ Jews were perverted and guilty of complicity in the death of¶ Christ, the faithful ended up by detesting them with a hatred 815 that was bound one day to express itself in violence .¶ Once unleashed, the expulsion of Jews from Spain followed¶ naturally from the verbal spread of hatred during the Inquisition.8 6¶ The economic consequences were grave. Many commercial enterprises in Seville and Barcelona, for instance, were ruined .¶ "Spain lost an incalculable treasure by the exodus of Jewish...¶ merchants, craftsmen, scholars, physicians, and scientists," wrote¶ the encyclopedic Will Durant, "and the nations that received them¶ benefitted economically and intellectually."88 Anti-Jewish preaching¶ in parts of Spain influenced a wide social segment of the population,¶ and the result was devastating both for the Jews who fled and for¶ the country that renounced them on dogmatic grounds. Elsewhere¶ in the ancient world, as historian Ben Kiernan has compellingly¶ documented, periodic mass massacres perpetrated against segments¶ of the native populations in Ireland, North and South America, and¶ Australia were likewise influenced by widely disseminated¶ dehumanizing statements. 9¶ The spread of ethnic and racial hatred continues to elicit¶ violence throughout the modern world. The dissemination of¶ ethnically incitable messages has precipitated tribal clashes in¶ Kenya.90 In Rwanda, ethnic stereotyping and repeated media calls¶ for the extermination of Tutsi led to a massive genocide perpetrated¶ against that group.9¶ '¶ Arab racial hate propaganda in the Sudan has catalyzed a¶ government-sponsored attempt to "cleanse" black Africans in¶ Darfur, Sudan." Likewise, in the Democratic Republic of the Congo¶ the government has relied on the incitement of ethnic hatred,¶ creating a culture where ethnic murder is a routine militia¶ practice. In the Arab world, terror organizations like Hamas and¶ Hizballah spread hatred against Jews without any interference from several governments, including Egypt, Syria, Lebanon, and Saudi¶ Arabia. 94 School texts that are "written and produced by Saudi¶ government" teach children to kill Jews and to hate Christians and¶ Jews.95¶ Hate propaganda in these countries is far more virulent than it¶ is in the United States; nevertheless, a democracy committed to the¶ protection of individual rights does not run afoul of free speech¶ principles by criminalizing group incitement that has so globally¶ proven to influence harmful social movements.¶ A First Amendment theory, as the Supreme Court made clear in¶ Virginia v. Black, must examine whether there are historical¶ reasons to believe that offensive expression against an identifiable¶ group is likely to intimidate reasonable audiences. Robert Post's¶ argument about the undemocratic nature of hate speech regulation¶ regards "the function of public discourse" to be the reconciliation of¶ "the will of individuals with the general will. Public discourse is¶ thus ultimately grounded upon a respect for individuals seen as 'free¶ and equal persons."'97 He emphasizes democracy's central obligation¶ to protect private "autonomous wills."9" His insightful¶ characterization, however, captures only part of the raison d'etre of¶ democracy; on a more community-oriented level, that system of¶ governance serves to protect the overall well-being of the polity¶ against the wanton call for discriminatory conduct or violence. And¶ Black explicitly sanctions states' use of historical records to identify¶ symbolism that is likely to terrorize the populace and, therefore,¶ detract from the common good.99 This development in First¶ Amendment jurisprudence indicates that there is more to democracy¶ than self-determination.¶ Post's most recent statement on hate speech does not address¶ Black, even though the chapter was written after the Court¶ rendered its decision. 100 He connects the expression of hate to¶ "'extreme' intolerance and 'extreme' dislike."' °¶ ' This description,¶ while correct, does not account for the connection between hate¶ speech and extreme conduct. While the Constitution does not¶ authorize laws against negative emotions, speech that is¶ substantially likely to cause discriminatory harm, especially violence, can be regulated without infringing on the fundamental¶ principles of democracy.

#### And, restrictions are key – a single unpunished case can cause unrest and allow the message to be sent. Barger JD 08

Barger, Allison [J.D., William & Mary School of Law, 2009;]. "Changing State Laws to Prohibit the Display of Hangman's Nooses: Tightening the Knot Around the First Amendment?." (2008).

The period of "lynch law" may have ended many years ago, but sadly its effects¶ and implications live on in the twenty-first century.2¶ " 2 To allow acts of hatred to continue¶ without threat of punishment is to regress into a state of barbarism thought to¶ have been overcome by the Civil Rights Movement. By taking action to penalize those¶ individuals who display nooses in order to threaten or harass others, state legislatures¶ would secure a tolerant and accepting society and thereby safeguard the general welfare¶ of their constituency. The story of the Jena 6 exemplifies the disturbing and controversial¶ aftermath of a racist act that did not implicate criminal punishment for the¶ responsible parties. A single unpunished racist act may permit racial tension within¶ a community to stew, boil, and eventually spill into a national controversy.¶ In light of the events in Jena, Louisiana, and the many reports of similar noose¶ displays that have sprung from that incident, state legislatures must take action to¶ secure the well-being of their citizenry. Banning the intentional display of nooses to¶ instill fear in a person or class of people does not infringe any further upon the First¶ Amendment right to free speech than prohibiting symbols like burning crosses. The¶ two symbols share a paralleled history and meaning of bigotry and terror, and the display¶ of both should be punished at an equally severe level. As signaled by Supreme¶ Court precedent and already existing hate crime laws, the need for protection against¶ acts of hate must at times restrain First Amendment free speech rights. By maintaining¶ sufficient safeguards, such as requiring an intent to intimidate in order to sanction¶ a criminal law addressing hangman's nooses, state legislatures will be able to admonish¶ the fear-inspiring icon of the noose while preserving basic constitutional rights.

## NR Frontlines

### Ovw

#### Evaluate CP solvency through the lens of sufficiency- the CP does not create as much free speech as the affirmative, but this DOESN”T MATTER in the context of the specific advantages they have read – they need to isolate why the ability to hang a noose is a valuable type of speech relevant to the AFF advantage. It is not b/c \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### So, even though there is a solvency deficit, there’s NO IMPACT to that deficit and the CP is sufficient to resolve the AFF advantage.

#### Even if you grant them the solvency deficit, the net benefit outweighs.

#### A. Systematic violence – Lynching imagery is the most violent form of racist imagery that constructs the university as a white institutional space inaccessible to black students. Our Berger ev indicates that a single incident that goes unchecked sends the message that minority students aren’t welcome and can’t participate in dialogue to begin with.

#### B. Magnitude – symbols like the noose prime society for genocide by sending the message that minority students don’t matter. Examples from the Congo, 30’s Germany, and terror organizations prove. Genocide outweighs their advantages b/c of XXXXXX

#### C. They don’t get their defense – Bell and Moore ev indicates that every time students have tried to use their speech in the instance of nooses they get subjected to racial epithets and death threats that perpetuate cycles of racism.

### Impact Extension

#### Connect to violent histories that perpetuate terrible teirrlbe shit. The presence of a noose always does symbolic violence

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

**When a noose is seen hanging from a tree** on a college campus, from a light fixture in a university library, **or near the office door of an African American university professor, it connects to a specific historical meaning.** **The practice of lynching**, specifically what Dray (2002) identifies **as “spectacle lynching,” was a grotesque but common manner of exerting social control over** **the** entire **black community from the antebellum era until at least World War I.** Often **done in geographically significant locations** (e.g., on trees in a central area of town or in a particular community), **lynching was** not only a **mechanism of individual torture: the lynching itself as public spectacle** was more important in its symbolism. **Most lynchings involved torture** far **beyond** the actual act of **hanging by the neck; lynch mobs** often first **carried out various acts of torture on their victims including vicious physical beatings, rape** (including sodomy), **or setting them on fire.** (Dray 2002). **Some individuals who were lynched were**, in fact, **already dead,** while for others death was imminent. The real significance, then, of **lynching was its message to the black community** as a whole: **this barbarous torture can happen to you if you challenge whiteness or step outside the confines of your racially oppressed position** (Dray 2002). ￼**As a mechanism of symbolic violence, lynching served as a form of public spectacle torture, which evoked widespread terror** that compelled black acquiescence to the racial order without the necessity for direct individual supervision or control.¶ **The noose is directly tied to the brutal history of lynching.** Therefore, **when placed as an object** or image **in a public space, the noose signifies the symbolic violence that maintains the power structure**—in this instance, **the racial order that organizes the social space in the same manner that spectacle lynching did** (Bourdieu 1989). **So when a noose was placed outside of the office door of an African American professor at Columbia University’s Teachers College in 2007**, **the spectacle** of the noose itself **immediately evoked terror and outrage** from the African American community at Columbia (Garland 2007). **It is never necessary for the person who publically hang**s or places an image of a noose in a public space **to intend the object or image to have this meaning**; in fact, **because the noose garners its meaning through its historical connection** **to** the social structure of **racial oppression, the communicator’s motive is irrelevant**. **As a tool of racial oppression, the noose** (the essential object needed to hang a body) **is a cultural referen**t, a symbol whose meaning is known as a result of shared knowledge of a social and cultural context (van Dijk 1997): **in this instance, the historical practice of lynching black people as a form of symbolic violence and social control.**

#### Counterspeech is not possible/Impact

Bell, Jeannine [Professor of Law, Maurer School of Law, Indiana University Bloomington. A.B.¶ Harvard College, 1991; J.D. University of Michigan Law School,]. "The Hangman's Noose and the Lynch Mob: Hate Speech and the Jena Six." (2009).

When noose hangings are targeted at an individual, the target is frequently,¶ though not always, Black.'° Blacks often view the hanging of a¶ noose as threatening behavior, even in cases in which the perpetrator may¶ later insist that his or her intention was not to harm.'0' It is easy to see why¶ those at whom a hangman's noose is targeted may have this reaction. When¶ noose hangings are targeted at individuals in the workplace, they are often¶ accompanied by speech indicating that the noose has been hung because the¶ Black worker's performance, or very presence, is resented. For example, in¶ the case mentioned earlier involving the Black female telephone worker who¶ had recently been promoted in Cranberry, Pennsylvania, the worker in question¶ discovered a doll with a rope around its neck in an envelope on her¶ desk. 02 A note pinned to the doll warned that the employee did not deserve¶ the promotion she had received.103 In this case, the perpetrator invoked the¶ segregation-era lynching of Blacks to suggest that the worker had stepped¶ out of her place.¶ Even when a direct message of resentment or hatred is absent, noose¶ hangings are often accompanied, preceded, or followed by racial or ethnic¶ slurs, which sharply emphasize the noose hangers' antipathy toward the¶ targeted Black worker.1 °¶ 4 Such an example arose in Burns v. Winroc¶ Corp.05 In Burns, Tyrone Bums and Marvin Dortch, Black delivery drivers,¶ described racist harassment in the form of being told racist jokes on a num- ber of occasions, hearing racial epithets used in their presence (the word¶ "nigger" was used frequently to describe African Americans), and on a particular¶ occasion being treated in a very demeaning way.' °¶ 0 On one occasion,¶ Bums was approached by a coworker who said, "I'm not a racist or nothing,¶ but you're really starting to act like a nigger now."'0 7 The frequency of the¶ racial jokes and epithets was high in the period before Bums discovered a¶ noose hanging vertically, in the same manner in which it would appear if it¶ had been used to hang someone. 0 8 Bums discovered the noose hung over¶ electrical wires near a warehouse bathroom shortly after Martin Luther King,¶ Jr. Day.' °9¶ The individual target of a noose may not always be indicated explicitly.¶ Some incidents may involve nooses left anonymously in workplaces, government¶ offices, public spaces, or in and around schools or universities. But¶ even in cases where the noose does not appear to be directed at a particular¶ individual, the noose's violent legacy, combined with the reality of¶ thousands of hate crimes committed each year,10 still cause racial and ethnic¶ minorities to view the noose as a threat:¶ The hangman's noose remains a potent and threatening symbol for¶ African-Americans, in part because the grim specter of racially¶ motivated violence continues to manifest itself in present day hate¶ crimes. Moreover, persistent inequality in this country resuscitates¶ for modem African-Americans many of the same insecurities felt¶ years ago." '¶ The noose's legacy is one of violence, and the experiences that minorities¶ may have as victims and witnesses of hate crime and racial discrimination¶ make the threat a serious one.¶ At bottom, noose hanging is threatening conduct that places the minority¶ target in the same position as a victim of a hate or bias crime who has¶ been racially harassed. Hate crime is very destabilizing to victims. Research¶ on hate crime victims reveals that the most common reaction is anger, followed by fear." 2 Victims often experience a variety of psychological and¶ physiological symptoms when they encounter racial harassment, including¶ high blood pressure, depression, nightmares, and post-traumatic stress." 3¶ Side-by-side studies comparing the experiences of victims of bias-motivated¶ and non-bias-motivated physical assaults of similar severity reveal that the¶ victims of the bias-motivated assaults are much more likely to feel the effects¶ of victimization and to have these feelings linger." 4 Racial harassment¶ can also lead an individual to significantly alter her life, including changing¶ her schedule to avoid the harasser."5 Noose hangings in the workplace may¶ have long-term consequences for the worker: "[T]he appreciation that even¶ one incident of racially threatening conduct-such as hanging a noose over¶ the workstation of a [B]lack employee or burning a cross in his or her presence-can¶ itself create a racially hostile work environment ...... "6

### Solvency Ext Ev

#### Allowing racist expression goes hand in hand with institutional colorblindness - racist expressions are a friendly reminder of a symbolic history of racism that prevents challenging a larger network of white supremacy. The cp is prior question. Moore and Bell 17

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Rather than being an anomaly, overtly racist expression on college campuses represents an element of white institutional space with two attendant functions. First, the activities and forms of expression used in these incidents serve as a signifier of the history of racial exclusion and oppression, which was enforced through brutality and violence in the United States. As such, these incidents become a form of symbolic violence that reinscribes notions of inherent inferiority and non-belonging for people of color through invocation of a historical precedent that reserved access to institutional spaces and their corresponding resources (such as education) for whites only, often by using physical and psychological violence as a deterrent against black challenges to such exclusion. Second, in harking back to a historical form of racism that is widely accepted as unpalatable today, these forms of racist expression tacitly reinforce the legitimacy of color-blind racist practices. Each incident of overt racial hostility functions as a reminder of the horrors of a racist history that color-blind frames disavow. Consequently, these incidents instantiate “real” racism and simultaneously dissociate real racism from color-blind racist, abstract liberalist institutional practices and discourses. Moreover, the regular, though ￼sporadic, occurrence of incidents of overt racist expression throughout the post–civil rights era provides regular opportunities for liberal communities to rally against racism—as defined in the limited manner of individual expressions of explicit racial hostility—and demonstrate a rhetorical commitment to abstract equality. By comparison, color-blind racism and color-blind racist institutional practices tend to look less serious and rarely if ever result in the same ire and protest, nor are they often thoughtfully considered as connected to these explicitly hostile racist incidents.¶ Signifying Racial History and Reinscribing Symbolic Violence¶ When a noose is seen hanging from a tree on a college campus, from a light fixture in a university library, or near the office door of an African American university professor, it connects to a specific historical meaning. The practice of lynching, specifically what Dray (2002) identifies as “spectacle lynching,” was a grotesque but common manner of exerting social control over the entire black community from the antebellum era until at least World War I. Often done in geographically significant locations (e.g., on trees in a central area of town or in a particular community), lynching was not only a mechanism of individual torture: the lynching itself as public spectacle was more important in its symbolism. Most lynchings involved torture far beyond the actual act of hanging by the neck; lynch mobs often first carried out various acts of torture on their victims including vicious physical beatings, rape (including sodomy), or setting them on fire. (Dray 2002). Some individuals who were lynched were, in fact, already dead, while for others death was imminent. The real significance, then, of lynching was its message to the black community as a whole: this barbarous torture can happen to you if you challenge whiteness or step outside the confines of your racially oppressed position (Dray 2002). ￼As a mechanism of symbolic violence, lynching served as a form of public spectacle torture, which evoked widespread terror that compelled black acquiescence to the racial order without the necessity for direct individual supervision or control.¶ The noose is directly tied to the brutal history of lynching. Therefore, when placed as an object or image in a public space, the noose signifies the symbolic violence that maintains the power structure—in this instance, the racial order that organizes the social space in the same manner that spectacle lynching did (Bourdieu 1989). So when a noose was placed outside of the office door of an African American professor at Columbia University’s Teachers College in 2007, the spectacle of the noose itself immediately evoked terror and outrage from the African American community at Columbia (Garland 2007). It is never necessary for the person who publically hangs or places an image of a noose in a public space to intend the object or image to have this meaning; in fact, because the noose garners its meaning through its historical connection to the social structure of racial oppression, the communicator’s motive is irrelevant. As a tool of racial oppression, the noose (the essential object needed to hang a body) is a cultural referent, a symbol whose meaning is known as a result of shared knowledge of a social and cultural context (van Dijk 1997): in this instance, the historical practice of lynching black people as a form of symbolic violence and social control.¶ Similarly, a burning cross and the garb adorned by the Ku Klux Klan signify a history of racial violence and white supremacy. These symbols are all linked to the practice of lynching and other forms of terroristic torture and violent repression aimed at African Americans throughout US history. As Matsuda and Lawrence (1993) note with regard to the symbol of a burning cross, “There is no Black person in America who has not learned the significance of this instrument of persecution and intimidation, who has not had emblazoned on his or her mind the image of Black ￼men’s scorched bodies hanging from trees” (133). Moreover, the word “nigger,” as constructed by white people as an epithet to denote black inferiority and the enforcement of systemic oppression, signifies racial oppression, exclusion, and the potential for violence (Delgado and Stefancic 2004). In 1993, the members of a white fraternity at Rider College invoked this signification of racial oppression, irrespective of their intent, when they held a party called “Dress Like a Nigger Night,” at which fraternity pledges were asked to “dress in a racially demeaning manner and go to the [fraternity] house for a work project” (Associated Press 1993). Because of its connection to the history of white supremacy, the mere utterance of the word in such a context brings about a reification of white power an¶ e both to the oppressive and often violent oppression of people of color throughout the history of this nation and to the contemporary racial social structure characterized by patterned societal racial inequality—that is, to systemic racism (Feagin 2006). Racist expression on college and university campuses, then, serves as a source of social control and symbolic violence in the same manner as in other social spaces. Hanging nooses, burning mock (or real) crosses, dressing up in Ku Klux Klan garb, performing mock reenactments of the violence of slavery, donning blackface in minstrel fashion, or deliberately enacting caricaturized, stereotypical black representations—all hark back to a history when the vast majority of institutions (including those of higher education) were “for whites only” and when the boundaries of those institutions were regulated through physical and symbolic violence. When racist speech and expression take place in institutional settings, such as in colleges and universities, these forms of communicative action reinscribe the relations of structural and cultural power that are essential elements of white ￼institutional spaces. This refashioning, reimagining and reenactment of some of the most sinister elements of Jim Crow racism using contemporary technologies and social forms signifies the continued outsider status and the alleged inferiority of people of color in these spaces. In addition, these spectacles involving the contemporary mobilization of the symbols of Jim Crow signify the continuing potential for symbolic and physical violence against people of color in these spaces despite the date and despite the appearance of color-blindness.

#### Permitting racist expressions puts faith in the marketplace of ideas that whitewashes history and reifies the abstract liberalism that they critique. Moore and Bell 17

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The practical result is a post–civil rights constitutional right to be racist in colleges and universities that administrators may not restrict in any meaningful way.11 The legal result is that whites can invoke state-centered protection for their racist speech and expression on college and university campuses, whereas students of color have no right to attain higher education free from dehumanizing, oppressive, and tacitly threatening communications. The broader outcome is that US courts have created an interinstitutional symbiosis that reifies color-blind racism and white institutional space. In creating a state protection for explicit racist expression on college and university campuses, the courts protect a powerful mechanism of white institutional space, ensuring that administrative discourse rebuking such racist activities never goes beyond rhetoric.¶ The Supreme Court’s assertion concerning the necessity of free speech absolutism in democratic society is dishonest. The Court’s previous allowance of legal restrictions on forms of speech (such as fighting words, obscenity, child pornography, and certain instances of fraudulent or libelous speech) illustrates that when a social value is considered important enough, content- based speech restrictions have been and continue to be permitted. Moreover, many other democratic countries in the world that constitutionally protect and respect freedom of speech and expression do, in fact, prohibit some forms of racist and ethnocentric expression. These restrictions have historically been based precisely on the kinds of structural connections between such expression and the histories of racial violence and oppression discussed above herein. In fact, after World War II, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, obligating signatories to create sanctions for “direct and public incitement to commit genocide” (see Tsesis 2010: 645). With the lessons ￼of World War II revealing startling connections between rhetorical manipulation and racial/ethnic genocide, many democratic nations responded by enacting criminal and civil penalties for certain forms of expressions of racial/ethnic animus and incitement. For example, the Canadian Supreme Court has prohibited hate speech, noting that the purpose of protections for free speech include “(1) seeking the truth and the common good, (2) promoting self- fulfillment of individuals by allowing them to develop thoughts and ideas as they see fit, and (3) ensuring that the political process is open to all persons” (quoted in Tsesis 2010, 647). Noting that racial/ethnic hate speech is not compatible with these goals, the Canadian Supreme Court has permitted “reasonable” limitations on such forms of speech (Tsesis 2010). In addition, the United Kingdom, Germany, France, and many other Western democracies permit criminal and civil penalties for racist and ethnocentric speech, including speech that creates hatred for an entire race/ethnicity, incites violence, or argues for the mass oppression of racial and ethnic groups (Tsesis 2010; Delgado and Stefancic 2004; Matsuda et al. 1993). Moreover, in Canada, the United Kingdom, and Germany, government policies have been created with special regard to such forms of hate speech on college and university campuses to prevent racist and xenophobic ideologies from “taking root” in these settings (Tsesis 2010, 646).¶ In the United States, however, the courts have prohibited such government interventions with regard to racist expression. Thus, while administrators may engage in a discursive disavowal of explicit and overt racism on campus, they must acknowledge (either publicly or in the privacy of administrative meetings) that they are, in fact, legally required to tolerate racist expression from the campus community. ￼The legal initiatives and changes resulting from the civil rights movement of the 1950s and 1960s were thought to have created equality of opportunity for access to institutions such as colleges and universities. The Fourteenth Amendment to the Constitution, which requires equal protection of the law, and the 1964 Civil Rights Act, which in Title VI requires that public educational institutions not permit racial discrimination, should guarantee people of color the right to participate meaningfully in US colleges and universities. Unfortunately, throughout the post–civil rights era, this meaningful participation has been thwarted by invidious racist activities in these institutions. Instead we see continued examples of expressions and activities that evoke a history of racial oppression, violence, and terrorism, reifying the boundaries of white institutional space and functioning to limit the meaningful participation of people of color. Powerful activists, such as the members of FIRE, have fought for legal protections for those who engage in such racism, and the US courts have codified a color-blind racist discourse protecting the rights of racist speakers over the rights of people of color in colleges and universities.¶ Our data demonstrate an ironic deployment of the dominant discourse of color-blind abstract liberalism as a mechanism for protecting explicitly racist expression through the deployment of the First Amendment protection of freedom of speech and expression. College and university administrators engage in a neo-liberal marketplace of ideas philosophy framed by a First Amendment absolutist rhetoric that fails to meaningfully recognize the historical racist context of these expressions and activities. As our analysis reveals, the notion of a counter- speech response to racist expressions is problematic and ineffective because the symbols of racist violence in this country attach to a history of white domination, and there exists no parallel racially equitable context that can be as easily referenced through public expressions. Moreover, institutional responses to explicitly racist incidents function to camouflage the more covert, ￼deeply embedded institutional practices that privilege white institutional power and tend to reproduce unequal white access to the material benefits accruing from these institutions. This research reveals an important symbiotic connection between explicitly hostile racist expression on college and university campuses and the more subtle color-blind racism typical of the post– civil rights era. In doing so we have extended the theoretical work on color-blind racism to facilitate an explanation for the continued significance of traditional Jim Crow racism on college and university campuses and, just as importantly, to illustrate one mechanism by which the boundaries of white institutional space are protected and reproduced in institutions of higher education More importantly, we believe that this research indicates that a meaningful analysis of equal access to higher education in this country calls for an interinstitutional examination of racist expression and its connection to racial violence and oppression. As we note, many other democracies that value and privilege the right of freedom of expression and speech have also placed limits on particular forms of racist and xenophobic speech because they see a clear connection between un-checked racist speech and the societal institution of racist policies. Institutions of higher education seem to be a logical space in which to begin a project that (1) interrogates the right of free speech in the context of connections between speech and expression and social context and structure, critically examining the neoliberal notion of a marketplace of ideas in which all ideas have equal weight and (2) exposes the neoliberal legal logic of First Amendment absolutism in the context of the actual substantive harm done to students of color at historically white institutions of higher education. While there is not space in this piece to delineate the parameters of a racially equitable construction of the First Amendment in relationship to racist speech and expression on college and university campuses, we have ￼provided a structurally contextualized analysis of these forms of expression as well as some examples of policies and laws in other social democracies that we view to be more thoughtful than current US law and policy. We hope that analyses such as ours will spark new debates and lead to policies that will bring about more racially equitable college and university campuses in this country.

### AT: Perm

#### The CP is competitive -

#### Currently first amendment law requires courts take into account the intent, which allows the person hanging a noose to determine what it means. We shift this test to account for the victim’s perspective and leave the hanger’s intent out of the question, which means we punish otherwise protected speech through the expansion of the ‘reasonable person’ test from the 9th circuit.

#### This means the cp goes against current precedent from Black, so any perm has to be severance - AC defended no restrictions on protected speech, which clearly the counterplan imposes.

#### A. No CP competes if they can sever out of the part that made it competitive- counterplans are crucial to negative ground when the SQ is indefensible- the neg can’t say rape or genocide is good

#### B. Moving target- the aff gets infinite prep to write the most strategic plan, allowing revisions to continue after they’ve heard our strategy makes neg victory impossible. Since the aff gets the last speech we can never respond to their last clarification

#### C. Don’t allow affirmative spin or re-explanation of the permutation- stick them to a defined text.

### AT: Vagueness

#### No vagueness because tis an explicit act. Berger 08

Barger, Allison [J.D., William & Mary School of Law, 2009;]. "Changing State Laws to Prohibit the Display of Hangman's Nooses: Tightening the Knot Around the First Amendment?." (2008).

Swanson's analysis of the decision in Black seemed to resonate with Hartley's¶ view.' 9 Swanson, however, veered in a different direction from Hartley in his solution.¶ Swanson proposed that states should not include in their criminal laws any explicit¶ mention of potentially symbolic speech such as cross burning or the display of Nazi¶ swastikas, but instead should adopt laws banning "all intimidating speech that threatens¶ people with bodily harm or death."'¶ " Swanson explained that this proposal "will certainly¶ proscribe some cross burnings, but not because they are cross burnings.''.¶ Under Swanson's solution, however, one may foresee definitional problems in interpreting¶ "intimidating speech," and states may refrain from prosecuting under such¶ statutes because of fear of misapplication. By including explicit proscriptions against¶ specific acts like cross buming in hate crime statutes, states do not participate in viewpoint¶ discrimination, but rather ensure that these especially demoralizing acts of¶ harassment do not go unpunished.

### A2 Symbol not Speech

#### Freedom of speech includes symbolic speech. US Courts

United States Federal Courts. "What Does Free Speech Mean?" United States Courts. Accessed April 28, 2017. http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does.

Freedom of speech includes the right: Not to speak (specifically, the right not to salute the flag). West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943). Of students to wear black armbands to school to protest a war (“Students do not shed their constitutional rights at the schoolhouse gate.”). Tinker v. Des Moines, 393 U.S. 503 (1969). To use certain offensive words and phrases to convey political messages. Cohen v. California, 403 U.S. 15 (1971). To contribute money (under certain circumstances) to political campaigns. Buckley v. Valeo, 424 U.S. 1 (1976). To advertise commercial products and professional services (with some restrictions). Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1976); Bates v. State Bar of Arizona, 433 U.S. 350 (1977). To engage in symbolic speech, (e.g., burning the flag in protest). Texas v. Johnson, 491 U.S. 397 (1989); United States v. Eichman, 496 U.S. 310 (1990).